

# **CHAPTER 5:99**



## **THIRD ROUND SUBSTANTIVE RULES**

**FOR THE PERIOD BEGINNING  
NOVEMBER 17, 2014**

**CHAPTER**  
**99**  
**SUBSTANTIVE RULES**  
**OF**  
**THE NEW JERSEY COUNCIL ON AFFORDABLE**  
**HOUSING FOR THE PERIOD BEGINNING**  
**NOVEMBER 17, 2014**

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**SUBCHAPTER 1: GENERAL PROVISIONS**

**5:99 1.1 Short title; purpose; scope**

- (a) The provisions of this chapter will be known as the “Substantive Rules of the New Jersey Council on Affordable Housing for the Period Beginning on November 17, 2014.”
- (b) The purpose of this chapter will be the provision of criteria to be used by municipalities in addressing their constitutional obligation to provide a realistic opportunity for the construction of their fair share of affordable housing for low and moderate income households.
- (c) These rules emphasize the core focus of the Mt. Laurel doctrine by requiring zoning to be the preferred means of meeting a municipality's fair share obligation, eliminating bonuses that have diluted that obligation and permitting alternate means of achieving municipality's obligation only where available land capacity is insufficient.
- (d) Given that production of affordable housing relies primarily on the private sector, these rules are designed to ensure that the sites selected by a municipality to meet its affordable housing obligation are realistic from an economic perspective through an Economic Feasibility Study. In the past, unreasonably high mandatory set asides and unrealistic site selections have created barriers to the actual production of affordable housing.
- (e) These rules establish a set aside of 10 percent, subject to appropriate adjustments. Inclusionary developments with reasonable set asides and appropriate compensatory benefits, assessed for economic feasibility, should result in an increase in the production of affordable housing units to meet the needs of low and moderate income households.

**5:99-1.2 Definitions**

The following words and terms, when used in this chapter, shall have the following meanings

unless the context clearly indicates otherwise:

“Act” means the Fair Housing Act of 1985 (N.J.S.A. 52:27D-301 et seq.).

“Accessory apartment” means a self-contained residential dwelling unit with a kitchen, sanitary facilities, sleeping quarters, and a private entrance, which is created within an existing home, or through the conversion of an existing accessory structure on the same site, or by an addition to an existing home or accessory building.

“Adaptable” means constructed in compliance with the technical design standards of the Barrier Free Subcode, N.J.A.C. 5:23-7.

“Adjusted projected need” means total projected need minus secondary sources of affordable housing supply as calculated in Appendix C.

“Adjustment” means the application of the Council’s rules which, based on other limitations and/or methodological corrections, may reduce or defer a municipality’s prior round obligation or reduce a municipality’s 2014 through 2024 household projections, pursuant to N.J.A.C. 5:99-5.

“Affordability assistance” means the use of funds to render housing units more affordable to low- and moderate-income households, pursuant to N.J.A.C. 5:99-11.10.

“Affordable” means a sales price or rent within the means of a low or moderate income household as defined in N.J.A.C. 5:99-10.

“Affordable housing delivery techniques” means any of the methods of creating actual housing units available to low-and moderate-income households or creating a realistic opportunity for the construction of such units as permitted by the Act.

“Affordable housing development” means a development included in the Housing Element and Fair Share Plan, and includes, but is not limited to, an inclusionary development, a municipal construction project or a 100 percent affordable development.

“Affordable unit” means an affordable housing unit proposed or created pursuant to the Act including units created with municipal affordable housing trust funds.

“Affordable Housing Obligation” means the total of the Rehabilitation Share, the Unanswered Prior Obligation and the Fair Share of Prospective Need.

“Agency” means the New Jersey Housing and Mortgage Finance Agency established by P.L.1983, c. 530 (N.J.S.A. 55:14K-1 et seq.).

“Age-restricted housing” means a housing unit that is designed to meet the needs of, and is exclusively for, an age-restricted segment of the population such that:

1. All the residents of the development where the unit is situated are 62 years or older;

2. At least 80 percent of the units are occupied by one person that is 55 years or older; or
3. The development has been designated by the Secretary of HUD as “housing for older persons” as defined in Section 807(b)(2) of the Fair Housing Act, 42 U.S.C. §§ 3607.

“Approvable site” means a site that may be developed for low and moderate income housing in a manner consistent with the rules and regulations of all agencies with jurisdiction over the site. A site may be approvable although not currently zoned for low- and moderate-income housing.

“Available land capacity” means a GIS-layered determination of a municipality’s developable land.

“Barrier free escrow” means the holding of funds collected to adapt affordable unit entrances to be accessible in accordance with N.J.S.A. 52:27D-311a et seq. Such funds must be held in a municipal affordable housing trust fund pursuant to N.J.A.C. 5:99-11.7.

“Buildable Limit” means a methodological constraint applied to the determination of municipal affordable housing need that identifies developable land and the ability to accommodate its Fair Share of Prospective Need and/or Unanswered Prior Obligation.

“Census subregion” means any geographic segment of the state, as defined by the U.S. Bureau of the Census.

“COAH” means the New Jersey Council on Affordable Housing.

“Conversion” means the creation of a new affordable housing unit through the alteration of existing structures.

“Council” means the New Jersey Council on Affordable Housing established under the Act which has primary jurisdiction for the administration of housing obligations in accordance with sound regional planning considerations in the State.

“Community capacity” means an estimate based on 20 percent of a municipality’s existing housing stock at the time it request a 20 percent cap.

“DCA” means the New Jersey Department of Community Affairs.

“Deficient housing unit” means a housing unit with health and/or safety code violations that require the repair or replacement of a major system. A major system includes weatherization, roofing, plumbing (including wells), heating, electricity, sanitary plumbing (including septic systems), lead paint abatement and/or load bearing structural systems.

“DEP” means the New Jersey Department of Environmental Protection.

“Developer” means any person, partnership, association, company or corporation that is the legal or beneficial owner or owners of a lot or any land proposed to be included in a proposed development including the holder of an option to contract or purchase, or other person having an enforceable proprietary interest in such land.

“Developable site” means a site that has access to appropriate water and sewer infrastructure, and is consistent with the applicable areawide water quality management plan (including the wastewater management plan) or is included in an amendment to the areawide water quality management plan submitted to and under review by DEP.

“Development” means the division of a parcel of land into two or more parcels, the construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any use or change in the use of any building or other structure, or of any mining, excavation or landfill, and any use or change in the use of any building or other structure, or land or extension of use of land, for which permission may be required pursuant to N.J.S.A. 40:55D-1 et seq.

“Development application” means the application form and all accompanying documents required by ordinance for approval of a subdivision plat, a site plan, planned development, conditional use, zoning variance or direction of the issuance of a permit pursuant N.J.S.A. 40:55D-34 or 36.

“Development fee” means money paid by a developer for the improvement of property as permitted in N.J.A.C. 5:99-11.3.

“Disabled person” means a person with a physical disability, infirmity, malformation or disfigurement which is caused by bodily injury, birth defect, aging or illness including epilepsy and any other seizure disorders, and which shall include, but not be limited to, any degree of paralysis, amputation, lack of physical coordination, blindness or visual impediment, deafness or hearing impediment, muteness or speech impediment or physical reliance on a service or guide dog, wheelchair, or other remedial appliance or device (N.J.S.A. 52:27D-304k).

“DOT” means the New Jersey Department of Transportation.

“Economic feasibility study” means an analysis completed by an individual or group of individuals with demonstrated professional knowledge and experience in real estate finance, real estate costs of development and construction and the market valuation of rental and for sale real estate products in New Jersey. Such analysis shall assess, consistent with the requirements of NJAC 5:99-7.2(b), all sites zoned for inclusionary development in a municipality’s housing element and Fair Share Plan designated for the production of low and moderate income housing to determine if the site is likely to provide a realistic opportunity to attract the capital needed to construct the low and moderate-income units proposed on a site during the period set forth in the municipal Fair Share Plan.

“Equalized assessed value” means the assessed value of a property divided by the current equalization ratio for the municipality. Estimates at the time of building permit may be obtained by the tax assessor utilizing estimates for construction cost. Final equalized assessed value shall be determined at project completion by the municipal assessor.

“Extension of expiring controls” means the process of increasing the number of years a deed restriction will apply to a unit. This can be done in several ways, most often through a voluntary extension by the owner with a monetary incentive, or through a municipal resolution according to the original deed restriction documents.



Courtesy copy of proposed regulations subject to revisions by the Office of Administrative Law.  
The proposed regulations will be published in the June 2, 2014 New Jersey Register.

“Fair Share Plan” means the plan that describes the affordable housing delivery techniques and the funding sources, if applicable, by which a municipality proposes to address its affordable housing obligation as established in the Housing Element. It includes the draft ordinances necessary to implement that plan, and addresses the requirements of N.J.A.C. 5:99-4.

“Fair Share of Prospective Need” or “Fair Share” means a projection of affordable housing needs based on development and growth that is reasonably likely to occur in the region or municipality during the period of 2014-2024.

“Final approval” means the official action of the planning board taken on a preliminary approved major subdivision or site plan after all conditions, engineering plans and other requirements have been completed or fulfilled and the required improvements have been installed or guarantees properly posted for their completion, or approval conditioned upon the posting of such guarantees.

“GIS” means geographic information systems designed to capture, store, manipulate, analyze, manage, and present all types of geographical data.

“Gut rehabilitation” means the same as “reconstruction.”

“Household” means the person or persons occupying a housing unit.

“Household growth projection” means an estimate of the household growth anticipated in each region between 2014 and 2024.

“Housing Element” means the portion of a municipality’s master plan, required by the Municipal Land Use Law (MLUL) at N.J.S.A.40:55D-28b(3) and the Act, that includes all information required by N.J.A.C. 5:99-4.2 and establishes the municipality’s affordable housing obligation.

“Housing region” means a geographic area, determined by the Council, of no less than two and no more than four contiguous, whole counties, which exhibits significant social, economic and income similarities and which constitutes, to the greatest extent practicable, a Primary Metropolitan Statistical Area (PMSA) as last defined by the United States Census Bureau.

“Improvements necessary for the provision of low and moderate income housing” means alteration, reconstruction, conversion, rehabilitation, change in use, additions or other improvements that results in the creation of an affordable housing unit.

“Inclusionary development” means a development containing both affordable units and market-rate units. This term includes, but is not necessarily limited to: new construction, the conversion of a non- residential structure to residential and the creation of new affordable units through the reconstruction of a vacant residential structure. Affordable units shall constitute at least 10 percent of the units to be produced unless adjusted based on an Economic Feasibility Study.

“Indigenous need” means local present need, or rehabilitation need or rehabilitation share.

“Individuals with special needs” means individuals with mental illness, individuals with physical or developmental disabilities and individuals in other emerging special needs groups identified

by State agencies that are at least 18 years of age if not part of a household. Special needs populations also include victims of domestic violence; ex-offenders; youth aging out of foster care; individuals and households who are homeless; and individuals with AIDS/HIV.

“Judgment of compliance” means a determination issued by the Superior Court approving a municipality’s plan to satisfy its affordable housing obligation.

“Low income” means 50 percent or less of the median gross household income for households of the same size within the housing region in which the household is located, based upon the U.S. Department of Housing and Urban Development’s (HUD) Section 8 Family Income Limits (uncapped) averaged across counties for the housing region.

“Low income housing” means housing affordable according to Federal Department of Housing and Urban Development or other recognized standards for home ownership and rental costs and occupied or reserved for occupancy by households with a gross household income equal to 50 percent or less of the median gross household income for households of the same size within the housing region in which the housing is located.

“Market-rate units” means housing not restricted to low- and moderate-income households that may sell or rent at any price.

“Market to affordable program” means a program to pay down the cost of market-rate units and offer them in sound condition, for sale or rent, at affordable prices to low- and moderate-income households to address all or a portion of the affordable housing obligation.

“Moderate income” means more than 50 percent but less than 80 percent of the median gross household income for households of the same size within the housing region in which the household is located, based upon the U.S. Department of Housing and Urban Development’s (HUD’s) Section 8 Family Income Limits (uncapped) averaged across counties for the housing region.

“Moderate income housing” means housing affordable according to Federal Department of Housing and Urban Development or other recognized standards for home ownership and rental costs and occupied or reserved for occupancy by households with a gross household income equal to more than 50 percent but less than 80 percent of the median gross household income for households of the same size within the housing region in which the housing is located.

“Multiple index need” means housing need estimates made at the regional level, usually including low- and moderate-income estimations, not available at the local level.

“Municipal land capacity” means an estimate of developable land based on GIS data, zoning, and/or special area designations which determine the municipality’s relative ability to absorb new development, including affordable housing.

“New construction” means the creation of a new housing unit under regulation by a code enforcement official regardless of the means by which the unit is created. Newly constructed units are evidenced by the issuance of a certificate of occupancy and may include new residences

created through additions and alterations, adaptive reuse, subdivision or conversion of existing space and moving a structure from one location to another.

“Non-residential development” means:

1. Any building or structure, or portion thereof, including, but not limited to, any appurtenant improvements, which is designated to a use group other than a residential use group according to the State Uniform Construction Code promulgated to effectuate the State Uniform Construction Code Act, (N.J.S.A. 52:27D-119 et seq.), including any subsequent amendments or revisions thereto;
2. Hotels, motels, vacation timeshares, and child-care facilities; and
3. The entirety of all continuing care facilities within a continuing care retirement community which is subject to the Continuing Care Retirement Community Regulation and Financial Disclosure Act, P.L. 1986, c. 103 (N.J.S.A. 52:27D-330 et seq.).

“Non-residential development fee” means the fee authorized to be imposed pursuant to sections 32 through 38 of P.L. 2008, c. 46 (N.J.S.A. 40:55D-8.1 through 40:55D-8.7).

“1,000-unit limitation” means a cap of the fair share of prospective need, where pursuant to N.J.S.A. 52:27D-307(e), no municipality shall be required to address its new construction obligation beyond 1,000 units within 10 years from the grant of substantive certification.

“Order for repose” means the protection a municipality has from builder’s remedy lawsuit for a period of time from the entry of a judgment of compliance by the Superior Court. A judgment of compliance often results in an order for repose.

“Payment in lieu of constructing affordable units” means the payment of funds to the municipality by a developer when affordable units are not produced on a site zoned for an inclusionary development.

“Petition for substantive certification” means a request made by municipal resolution which a municipality files, or is deemed to have filed in accordance with N.J.A.C. 5:98-1 et seq., which engages the Council’s review process seeking a determination as to whether the Housing Element and Fair Share Plan of the municipality are consistent with the Act and compliant with rules promulgated by the Council.

“Phasing schedule” means a schedule setting forth the timeframes by which an affordable housing site or zone will produce affordable housing in accordance with N.J.S.A. 52:27D-311 (b).

“Present need” is indigenous need, or rehabilitation need, or rehabilitation share.

“Prior Obligation” means the sum of the 1987-1999 and the 1999-2014 prior obligation as determined in Appendix D. It includes secondary sources but not credits for the provision of affordable units and publicly subsidized housing.

Courtesy copy of proposed regulations subject to revisions by the Office of Administrative Law.  
The proposed regulations will be published in the June 2, 2014 New Jersey Register.

“Prospective need” means a projection of low- and moderate-income housing needs based on development or growth likely to occur in a region or municipality. It does not include secondary sources of supply.

“Public Use Microdata Areas (PUMAs)” are geographic contiguous areas of population 100,000 or more which are used by the Census to collect detailed information.

“Public Use Microdata Sample (PUMS)” means a Census sample of individuals used to acquire detailed information about their personal characteristics, households, and housing. PUMS data provides detailed information that is very malleable for areas whose population exceeds 100,000.

“RCA Project Plan” means a past application, submitted by a receiving municipality in an RCA, delineating the manner in which the receiving municipality intended to create or rehabilitate low- and moderate-income housing.

“Realistic opportunity” means a consideration of facts and conditions resulting in a determination that there is a reasonable likelihood that the affordable housing in a municipality’s Housing Element and Fair Share Plan will actually be constructed or provided during the 10-year period of certification based upon a careful analysis of the elements in the municipality’s plan, including the financial feasibility of each proposed mechanism, and the suitability of specific sites as set forth in N.J.A.C. 5:99-7.

“Recapture funds” means funds collected by the municipality upon the first non-exempt sale of an affordable unit after the expiration of the control period or repayment of loan funds pursuant to the terms of a lien or mortgage note.

“Receiving municipality” means, for the purposes of an RCA, a municipality that contractually agrees to assume a portion of another municipality’s fair share obligation.

“Reconstruction” means any project where the extent and nature of the work is such that the work area cannot be occupied while the work is in progress and where a new certificate of occupancy is required before the work area can be reoccupied, pursuant to the Rehabilitation Subcode, N.J.A.C. 5:23-6. Reconstruction shall not include projects comprised only of floor finish replacement, painting or wallpapering, or the replacement of equipment or furnishings. Asbestos hazard abatement and lead hazard abatement projects shall not be classified as reconstruction solely because occupancy of the work area is not permitted.

“Redevelopment” means planning and construction activities designed to build, conserve or rehabilitate structures, sites and improvements in accordance with a redevelopment plan pursuant to N.J.S.A. 40A:12A-3 of the Local Redevelopment and Housing Law.

“Redevelopment agency” means a municipal redevelopment agency created pursuant to N.J.S.A. 40A:12A-11 of the Local Redevelopment and Housing Law.

“Redevelopment area” or “area in need of redevelopment” means an area determined to be an area in need of redevelopment pursuant to N.J.S.A. 40A:12A-5 and 6 of the Local Redevelopment and Housing Law.

Courtesy copy of proposed regulations subject to revisions by the Office of Administrative Law.  
The proposed regulations will be published in the June 2, 2014 New Jersey Register.

“Redevelopment plan” means a plan adopted by the governing body of a municipality for the redevelopment or rehabilitation of all or any part of a redevelopment area or rehabilitation area pursuant to N.J.S.A. 40A:12A-7 of the Local Redevelopment and Housing Law.

“Region” See ‘Housing Region.’

“Regional household floor income” means \$100 less than the lowest municipal median household income in the housing region.

“Regional median household income above the floor” means the average median household income above the floor for each municipality in the housing region.

“Regional Contribution Agreement (RCA)” means a contractual agreement, pursuant to the Act, into which two municipalities voluntarily entered to transfer a portion of a municipality’s affordable housing obligation to another municipality within its housing region.

“Rehabilitation” means the repair, renovation, alteration or reconstruction of any building or structure, pursuant to the Rehabilitation Subcode, N.J.A.C. 5:23-6.

“Rehabilitation area” or “area in need of rehabilitation” means an area determined to be in need of rehabilitation pursuant to N.J.S.A. 40A:12A-14 of the Local Redevelopment and Housing Law.

“Rehabilitation share” means the number of deficient housing units occupied by low- and moderate-income households within a municipality, established in Appendix B that must be addressed in a Fair Share Plan.

“Second Round” means the affordable housing obligations for the period of 1993-1999 as set forth in N.J.A.C. 5:93-1 et seq. Second round includes the prior round obligation from 1987-1993.

“Section 8 income limits” means a schedule of income limits according to Federal Department of Housing and Urban Development standards that define 50 percent and 80 percent of median family income by household size. When used in this chapter, Section 8 income limits shall refer to the “uncapped” schedule as published by the Council, in accordance with its rules.

“Sending municipality” means, for purposes of a past RCA, a municipality that has contractually agreed to transfer a portion of its fair share obligation to another willing municipality.

“Set-aside” means the percentage of housing units devoted to low- and moderate-income households within an inclusionary development, which shall be a minimum of 10 percent subject to adjustment through an Economic Feasibility Study.

“Sewer capacity” means the ability to treat and dispose of all sewage generated from a site by means of public or private, off-site or on-site facilities that are consistent with the area wide water quality management plan (including the wastewater management plan), or with an amendment to the area wide water quality management plan submitted to and under review by DEP, as applicable.

“Site control” means the demonstration that a developer or municipality maintains outright ownership of a site, a contract to purchase or an option on the property.

“Spending plan” means a method of allocating funds contained in a affordable housing trust fund account, which includes, but is not limited to, development fees collected and to be collected pursuant to an approved municipal development fee ordinance, or pursuant to N.J.S.A. 52:27D-329.1 et seq. for the purpose of meeting the housing needs of low and moderate income individuals.

“Substantive certification” means a determination by the Council approving a municipality’s Housing Element and Fair Share Plan in accordance with the provisions of the Act, this chapter and N.J.A.C. 5:98-1 et seq. A grant of substantive certification may run for a period of 10 years beginning on the date that a municipality files its Housing Element and Fair Share Plan with the Council in accordance with N.J.S.A. 52:27D-313, but shall not extend beyond December 31, 2024.

“Suitable site” means a site that has clear title and is free of encumbrances which preclude development of affordable housing; is adjacent to compatible land uses; has access to appropriate streets, water and sewer infrastructure; can be developed consistent with the Residential Site Improvement Standards and the rules or regulations of all agencies with jurisdiction over the site; and is consistent with the site suitability criteria delineated in N.J.A.C. 5:99-7.1(b). A site may be deemed suitable although not currently zoned for affordable housing.

“Total projected need” means the estimated number of housing units needed to house newly formed low and moderate-income households for the period 2014 to 2024 as calculated in Appendix C.

“Townhouse” means a single family attached dwelling unit as defined in the Barrier Free Subcode of the Uniform Construction Code, N.J.A.C. 5:23-7.

“Treasurer” means the Treasurer of the State of New Jersey.

“20-percent cap” means a cap of the affordable housing obligation.

“Unanswered Prior Obligation” means the sum of the 1987-1999 and the 1999-2014 prior obligations as determined in Appendix D reduced by past affordable housing completions and publicly subsidized affordable housing that is eligible for crediting pursuant to N.J.S.A. 52:27D-307(c)(1) and N.J.A.C. 5:93-1 et seq..

“UHAC” means the Uniform Housing Affordability Controls, as set forth in N.J.A.C. 5:80-26.1 et seq.

“Vacant developable land” means municipal land development capacity.

“Vacant land adjustment” means an adjustment to the prior round affordable housing obligation due to available land capacity, pursuant to N.J.A.C. 5:99-5.

“Very low income” means 30 percent or less of the median gross household income for

households of the same size within the housing region in which the household is located, based upon the U.S. Department of Housing and Urban Development's (HUD) Section 8 Income Limits (uncapped) averaged across counties for the housing region.

"Very low income housing" means housing affordable according to Federal Department of Housing and Urban Development or other recognized standards for home ownership and rental costs and occupied or reserved for occupancy by households with a gross household income equal to 30 percent or less of the median gross household income for households of the same size within the housing region in which the housing is located.

"Water capacity" means the ability to provide adequate potable water to a site from a public or private, off-site or on-site source of supply, in a manner consistent with all applicable regulations.

"Zoning District" means an area within a municipality in which buildings and structures are regulated by ordinance according to the type, nature and extent of use pursuant to N.J.S.A 40:55D-65.

## **SUBCHAPTER 2: MUNICIPAL DETERMINATION OF AFFORDABLE HOUSING OBLIGATION**

### **5:99-2.1 General**

(a) The Affordable Housing Obligation for each municipality shall be comprised of the following:

1. Rehabilitation share;
2. Unanswered prior obligation;
3. Fair share of prospective need.

### **5:99-2.2 Rehabilitation Share**

(a) The Rehabilitation Share is the number of existing housing units as of July 1, 2014 that are both deficient and occupied by low and moderate income households. Each municipality's share is determined through the methodology provided in Appendix B.

(b) A municipality's rehabilitation share will be met if the deficient housing units occupied by low and moderate income households are rehabilitated to code standard or replaced with new construction of affordable housing to low and moderate income households.

(c) In lieu of using the Total Rehabilitation Share calculated for a municipality in Appendix

B, a municipality may conduct a municipal survey to determine the Rehabilitation Share using forms and instructions provided by the Council. The Council shall review the results of the data collected and shall modify the rehabilitation share if it determines a modification is warranted.

#### **5:99-2.3 Unanswered Prior Obligation**

(a) Unanswered Prior Obligation includes the sum of the new construction obligation for the 1987-1999 period and the prior need for 1999-2014 as determined through the methodology set forth in Appendix D. The prior obligations are reduced by past affordable housing completed and publicly subsidized affordable housing eligible for crediting pursuant to N.J.S.A. 52:27D-307(c)(i) and N.J.A.C. 5:93-1 et seq.

(b) Municipalities shall be governed by the standards in N.J.A.C. 5:93 et seq. to address Unanswered Prior Obligations but shall not be required to address more than 50 percent of the Prior Round Obligation until such time as the entire Fair Share of Prospective Need has been constructed.

(c) Any site or zoning district zoned for affordable housing to meet the Unanswered Prior Obligation in a municipality's Housing Element and Fair Share Plan must be reviewed as part of the Economic Feasibility Study required pursuant to N.J.A.C. 5:99-7.2(b) unless the site is/was the subject of a court order.

(d) In lieu of using the Unanswered Prior Obligation calculated in Appendix D for a particular municipality, the municipality may submit information of past affordable housing completions and publicly subsidized housing, in the form prescribed in N.J.A.C. 5:98-11, to use in the calculation of its Unanswered Prior Obligation, subject to verification by the Council. The Council shall review the information provided and shall modify the Unanswered Prior Obligation if it determines a modification is warranted.

#### **5:99-2.4 Fair Share of Prospective Need**

(a) The Fair Share of Prospective Need is a projection of low and moderate housing needs in a municipality based on development and growth that is reasonably likely to occur in the region or municipality for the period of 2014-2024 as determined through the methodology provided in Appendix C and includes the reductions and limits set forth at N.J.A.C. 5:99-3.2, 3.3, and 3.4. This projection includes reductions for caps and Buildable Limit as set forth in Subchapter 3.

(b) A municipality that has an Unanswered Prior Obligation of less than zero and did not receive a vacant land adjustment for the 1987-1999 or 1999-2014 period may use the surplus units to reduce its Fair Share of Prospective Need obligation.



### **SUBCHAPTER 3: REDUCTIONS, LIMITS AND SUBSTANTIAL COMPLIANCE**

#### **5:99-3.1 General**

(a) A municipality's Affordable Housing Obligation may be reduced by the following:

1. 1000 unit cap reduction;
2. Buildable Limit;
3. 20 Percent Cap Limit;
4. Substantial Compliance Reduction.

#### **5:99-3.2 One Thousand Unit Cap Reduction**

(a) No municipality shall be required to address a fair share beyond 1,000 units within ten years from the grant of substantive certification, unless it is demonstrated, following an objection and an evidentiary hearing, based upon the facts and circumstances of the affected municipality that it is likely that the municipality through its zoning powers could create a realistic opportunity for more than 1,000 low and moderate income units within the ten-year period. The facts and circumstances which shall determine whether a municipality's fair share shall exceed 1,000 units shall be a finding that the municipality has issued more than 5,000 certificates of occupancy for residential units in the ten-year period preceding the petition for substantive certification.

#### **5:99-3.3 Buildable Limit**

(a) Development capacity in new units is determined via a GIS-layering parcel data process, as described in Appendix E, that determines developable land and the ability to accommodate affordable units.

(b) A municipality that does not have the development capacity to meet its Fair Share of Prospective Need and/or Unanswered Prior Obligations may have its obligations for new construction reduced to that which can be accommodated as determined by land capacity as set forth in Appendix E.

(c) Municipalities that receive a reduction based on Buildable Limit shall evaluate the existing municipal land use map and inventory for areas that may develop or redevelop to identify additional opportunities for the creation of affordable housing. These may include:

1. Zoning amendments that permit apartments or accessory apartments

2. A market to affordable program
3. Overlay zoning requiring inclusionary development.
4. A redevelopment area that includes affordable housing

#### 5:99-3.4      **20 Percent Cap Limit**

- (a) The 20 percent cap ensures that a community will not have to rebuild itself and change the essential character of the community to meet its 10 year future housing obligation.
- (b) An adjustment based on the 20 percent cap which was granted as part of a second round certification or judgment of compliance shall continue to be valid.
- (c) To determine the 20 percentage cap for a municipality, the fair share of prospective need obligation is multiplied by five and compared to the number of total housing units from 2010. The difference is the number of units reduced from the municipality's affordable housing obligation.
  1. If the community capacity is larger than the municipal prior round affordable housing obligation, the 20 percent cap is zero.
  2. If community capacity is smaller than the municipal prior round affordable housing obligation, the difference between community capacity and the municipal prior round affordable housing obligation is the adjustment based on the 20 percent cap.

#### 5:99-3.5      **Substantial Compliance Reduction**

- (a) A reduction of the Unanswered Prior Obligation shall be granted according to the following schedule when the Council determines that a municipality has substantially complied with the terms of any prior round substantive certification and has actually created a substantial percentage of the new units that were part of the municipal 1987-1999 housing obligation and its 1999-2014 prior obligation as calculated in Appendix D.

Percentage of Units Completed	Reduction
80 or more	20%
75-79	15%
70-75	10%
69-70	5%

- (b) The reduction, and/or the units associated herewith, above in a) shall only be applied to the Unanswered Prior Obligation component of the Affordable Housing Obligation. This reduction shall be applied after the Council has accepted all other reductions. In no event shall

the substantial compliance credit be used to reduce a municipality's Fair Share of Prospective Need.

#### **SUBCHAPTER 4: MUNICIPAL SUBMISSION REQUIREMENTS AND FAIR SHARE PLAN PREPARATION**

##### **5:99-4.1 General**

(a) The municipal Housing Element and Fair Share Plan and implementing ordinances shall be filed with the Council in accordance with N.J.A.C. 5:98-2 (if filing only) or with N.J.A.C. 5:98-3 (if seeking substantive certification.)

##### **5:99-4.2 Housing Element**

(a) A municipal Housing Element shall be designed to achieve the goal of access to affordable housing to meet present, prior and prospective housing needs, with particular attention to low and moderate income housing, and shall contain at least:

1. An inventory of the municipality's housing stock by age, condition, purchase or rental value, occupancy characteristics and type, including the number of units affordable to low and moderate income households and substandard housing capable of being rehabilitated;
2. A projection of the municipality's housing stock, including the probable future construction of low and moderate income housing, for the next ten years, taking into account, but not necessarily limited to, construction permits issued, approvals of applications for development and probable residential development of lands;
3. An analysis of the municipality's demographic characteristics, including but not necessarily limited to, household size, income level and age;
4. An analysis of the existing and probable future employment characteristics of the municipality;
5. A determination of the municipality's present and prospective fair share for low and moderate income housing and its capacity to accommodate its present and prospective housing needs, including its fair share for low and moderate income housing;
6. A consideration of the lands that are most appropriate for construction of low and moderate income housing and of the existing structures most appropriate for conversion to, or rehabilitation for, low and moderate income housing, including a consideration of lands of developers who have expressed a commitment to provide low and moderate income housing;

7. A map of all sites designated by the municipality for the production of low and moderate income housing and a listing of each site that includes its owner, acreage, lot and block;
8. The location and capacities of existing and proposed water and sewer lines and facilities relevant to the designated sites;
9. Copies of necessary applications for amendments to, or consistency determinations regarding, applicable area-wide water quality management plans (including wastewater management plans);
10. A copy of the most recently adopted municipal master plan;
11. For each designated site, a copy of the New Jersey Freshwater Wetlands maps where available. When such maps are not available, municipalities shall provide appropriate copies of the National Wetlands Inventory maps provided by the U.S. Fish and Wildlife Service; and
12. Any other documentation pertaining to the review of the municipal housing element as may be required by the Council.

#### 5:99-4.3 **Fair Share Plan**

(a) The Fair Share Plan shall describe the completed or proposed affordable housing delivery techniques and funding sources, if applicable, that will be used to address a municipality's Affordable Housing Obligation and shall include at least the following:

1. A description of how the municipality intends to address its Affordable Housing Obligation. In addressing its obligation, a municipality must address its Fair Share of Prospective Need prior to addressing its Unanswered Prior Obligation, and may address its rehabilitation share either through a rehabilitation program, as set forth below, or through new construction;
2. A description for reserving at least 13 percent of the housing units made available for low and moderate income households for occupancy by very low income households as part of its statutory obligations pursuant to N.J.S.A. 52:27D-329.1;
3. A determination of the total residential zoning necessary to assure that the municipality's Affordable Housing Obligation is achieved based on inclusionary zoning with a 10 percent affordable housing set-aside unless higher set-asides are required pursuant to N.J.A.C. 5:99-5.2;
4. An Economic Feasibility Study for each site or zoning district zoned for inclusionary development shall be included in the municipal Fair Share Plan submitted for certification. The study shall conform with N.J.A.C. 5:99-7.2(b) and include a certification by the individual or group that conducted the Study that the set-asides, densities and financial

incentives associated with the zoned affordable housing sites in included the Fair Share Plan provide a realistic opportunity for the construction of affordable housing. Such analysis shall also confirm that, based upon reasonable investigation, each of the proposed sites are available, developable (including availability of essential services to such sites as wastewater treatment, potable water and transportation access), approvable and buildable within the ten year certification period.

5. An analysis of how the housing delivery techniques identified in the Fair Share Plan serve the demographics and affordable housing needs set forth in the Housing Element;
  6. If the municipal Fair Share Plan proposes a number of age-restricted low-or moderate-income units that exceeds 25 percent of the municipality's total affordable housing obligation, the municipality must demonstrate that the regional need for age-restricted housing supports the percentage proposed;
  7. A municipality with insufficient vacant land that is seeking a vacant land adjustment pursuant to N.J.A.C. 5:99-5 shall also submit all information and documentation required N.J.A.C. 5:99-5.2 unless it demonstrates that the Fair Share Plan does not rely upon the availability of vacant land or it takes measures to reserve scarce resources;
  8. Draft and/or adopted ordinances necessary for the implementation of the techniques designed to satisfy the Affordable Housing Obligation;
  9. A demonstration of existing or planned water and sewer capacity sufficient to accommodate all proposed techniques; and
  10. A spending plan pursuant to N.J.A.C. 5:99-11.12, if the municipality maintains or intends to establish an affordable housing trust fund pursuant to N.J.A.C. 5:99-11.
- (b) If a municipality intends to collect development fees, it shall prepare a plan to spend development fees that includes the following:
1. A projection of revenues anticipated from imposing fees on development, based on historic development activity;
  2. A copy of the draft municipal development fee ordinance consistent with N.J.A.C. 5:99-11.3;
  3. A description of the anticipated use of all development fees;
  4. A schedule for the creation or rehabilitation of housing units;
  5. If the municipality envisions being responsible for public sector or non-profit construction of housing, a pro-forma statement of the anticipated costs and revenues associated with the development; and
  6. The manner through which the municipality will address any expected or unexpected shortfall if the anticipated revenues from development fees are not sufficient to implement

the plan.

- (c) To the extent applicable, the Fair Share Plan shall demonstrate compliance with the regional planning provisions of N.J.S.A. 52:27D-329.9.

## **SUBCHAPTER 5: VACANT LAND ADJUSTMENTS**

### **5:99-5.1 Purpose and background**

(a) Subchapter 2 and 3 delineate the criteria for determining the municipal housing obligation. However, there may be instances where a municipality does not have adequate resources (land, water and/or sewer) to provide a realistic opportunity for addressing the need for low and moderate income housing as determined by the Council. This subchapter outlines standards and procedures for municipalities to demonstrate that the municipal response to its housing obligation is limited by the lack of land, water or sewer. The procedures in this subchapter shall not be used to reduce or defer the rehabilitation component.

### **5:99-5.2 Submission requirements for vacant land adjustment**

(a) Municipalities that request an adjustment due to lack of available land capacity shall submit an existing land use map at an appropriate scale to display the land uses of each parcel within the municipality. Such a map shall display the following land uses: single family, two-to-four family, other multi-family, commercial, industrial, agricultural, parkland, historically or important architecture and sites, environmentally sensitive lands other public uses, semipublic uses and vacant land.

(b) Municipalities that request an adjustment due to lack of available land capacity shall submit an inventory of vacant parcels by lot and block that includes the acreage and owner of each lot.

(c) Municipalities that request a vacant land adjustment due to lack of available land capacity shall submit, as part of its Economic Feasibility Study, an assessment of each vacant site identified in the inventory to determine the maximum set asides that would be economically feasible given the use of density bonuses and other effective affirmative planning and zoning devices including financial incentives. In addition the municipality shall provide an analysis of the feasibility of providing affordable housing through other delivery techniques, including but not limited to 100 percent affordable construction, redevelopment, gut rehabilitation, accessory apartments, market to affordable and extension of expiring controls.

(d) All vacant sites identified in the studies called for in (c) above where an affordable housing set-aside would result in a minimum of two affordable units shall be counted toward the municipal capacity to address the fair share of the prospective need.

(e) If the municipality is seeking an adjustment pursuant due to lack of available land capacity, the certification that accompanies the Economic Feasibility Study required pursuant to N.J.A.C. 5:99-7.2(b) shall include language that the densities and affordable housing set-asides proposed in the municipality's plan are capable of providing a realistic opportunity given the use of density bonuses and other effective affirmative planning and zoning devices and that no other suitable sites in the municipality are available for the construction of affordable housing that could provide a realistic opportunity

### 5:99-5.3 **Vacant land inventory**

(a) Municipalities shall exclude from the vacant land inventory:

1. Any land that is owned by a local government entity that, as of January 1, 1997, has adopted, prior to the filing of a petition for substantive certification, a resolution authorizing the execution of an agreement that such land shall be utilized for a public purpose other than housing; and
2. Any land listed on a master plan of a municipality as being dedicated, by easement or otherwise, for purposes of conservation, park lands or open space and which is owned, leased, licensed, or in any manner operated by a county, municipality or tax-exempt, nonprofit organization including a local board of education, or by more than one municipality by joint agreement pursuant to P.L.1964, c.185 (C.40:61-35.1 et seq.), for so long as the entity maintains such ownership, lease, license, or operational control of such land
3. Any vacant contiguous parcels of land in private ownership of a size which would accommodate less than two affordable units resulting from a 20 percent set-aside where the municipality has provided an economic feasibility study indicating that the existing zoning cannot be amended to provide a realistic opportunity for the construction of at least two affordable units;
4. Lands excluded due to historical significance or important architecture including historic and architecturally important sites listed on the State Register of Historic Places or National Register of Historic Places prior to the submission of the petition of substantive certification;
5. Sites and their environs or environmentally sensitive lands which may be jeopardized by development;
6. Lands where development of such would significantly alter the established pattern of development in the community;
7. Agricultural lands when the development rights to these lands have been purchased or restricted by covenant;
8. Sites designated for active recreation or recreational purposes in the municipal master plan. Municipalities may reserve three percent of their total developed and developable acreage for active municipal recreation and exclude this acreage from consideration as

potential sites for low and moderate income housing. All sites designated for active recreation must be designated for active recreational purposes in the municipal master plan. Sites designated for active recreation must be purchased and limited to active recreational purposes within one year of substantive certification; and

9. Environmentally sensitive lands where development is prohibited by any State or federal agency.

- i. Within the areas of the State regulated by the Pinelands Commission, Division of Coastal Resources of the DEP and the Hackensack Meadowlands Development Commission of DCA, the Council shall adhere to the policies delineated in The Pinelands Comprehensive Management Plan, N.J.A.C.7:50; the Coastal Permit Program Rules, N.J.A.C.7:7-1; Coastal Resource and Development Rules, N.J.A.C.7:7E-1; and the Zoning Regulations of the Hackensack Meadowlands District (N.J.A.C. 19:4.)
- ii. In areas of the State not regulated by the Pinelands Commission, the Division of Coastal Resources and the Hackensack Meadowlands Development Commission, municipalities may exclude as potential sites for low and moderate income housing: inland wetlands as delineated on the New Jersey Freshwater Wetlands Maps, or when unavailable, the U.S. Fish and Wildlife Service National Wetlands Inventory; or as delineated on-site by the U.S. Army Corps of Engineers or DEP, whichever agency has jurisdiction; when on-site delineation is required by the Council; flood hazard areas as defined in N.J.A.C. 7:13; and sites with slopes in excess of 15 percent which render a site unsuitable for low and moderate income housing. In cases where part of a site is unsuitable for low and moderate income housing because of flood hazard areas or inland wetlands, the Council shall not permit low and moderate income housing to be constructed on that unsuitable part of the site; provided however, that this rule shall not prohibit construction of low and moderate income housing on the remainder of the site. In the case of slopes in excess of 15 percent, a municipality may regulate inclusionary development through a steep slope ordinance, provided the ordinance also regulates non-inclusionary developments in a consistent manner. The Council reserves the right to exclude sites in whole or in part when excessive slopes threaten the viability of an inclusionary development.
- iii. Where the Legislature adopts legislation that requires the mapping of other natural resources and provides a mechanism for their regulation, the Council shall include such resources in its criteria and guidelines for municipal adjustment.

10. Individual sites that the municipality determines are not suitable for low and moderate income housing may also be eliminated from the inventory described in (d) above upon submission of a detailed explanation for the exclusion attested to by a New Jersey licensed Professional Planner; and

11. Municipalities shall also exclude from this calculation of total vacant and undeveloped lands, those owned by nonprofit organizations, counties and the State or Federal government



when such lands are precluded from development at the time of substantive certification.

- (b) No municipality shall be required to utilize for affordable housing purposes land that is excluded from being designated as vacant land.

#### **5:99-5.4 Vacant Land Adjustment Review**

(a) The Council shall review the existing land use map and inventory to determine which sites are most likely to develop for low and moderate income housing. All vacant sites shall initially be presumed to fall into this category. In addition, the Council may determine that other sites devoted to a specific use which involves relatively low- density development would create an opportunity for affordable housing if inclusionary zoning was in place. The Council may request a letter from the owner of sites that are not vacant indicating the site's availability for inclusionary development.

1. Municipalities may present documentation that the Council shall use to eliminate a site or part of a site from the inventory of sites described in N.J.A.C. 5:99-5.3(a). Partial elimination of a site shall not necessarily eliminate an entire site as unsuitable.

(b) The Council shall consider sites, or parts thereof, not specifically eliminated from the inventory described in N.J.A.C. 5:99-5.3(a), for inclusionary development. The Council shall consider the character of the area surrounding each site and the need to provide housing for low and moderate income households in establishing densities and set-asides for each site, or part thereof, remaining in the inventory.

(c) The municipality's vacant land adjustment will reflect its affordable housing obligation reduced by the number of units that can be provided in the municipality either through an economically feasible inclusionary development with set asides as determined pursuant to 5:99-5.2(c) and/or other affordable housing delivery techniques.

### **SUBCHAPTER 6: REHABILITATION PROGRAM**

#### **5:99-6.1 Rehabilitation Obligation**

(a) The purpose of a rehabilitation program is to renovate deficient housing units that are occupied by low- and moderate-income households. The estimate of each municipality's deficient units occupied by low- and moderate-income households is determined through the methodology provided in Appendix B. This rehabilitation number may also be provided through a survey of the municipal housing stock conducted in accordance with the exterior housing survey available on the Council's website. Where the municipality or objector performs the exterior housing survey, the Council shall review the results of the data collected and shall modify the rehabilitation share number if it determines a modification is warranted.

(b) The following provisions shall apply to a rehabilitation program:

1. Housing deficiencies shall be corrected and the unit shall comply with the New Jersey State Housing Code, N.J.A.C. 5:28 or with the requirements of the Rehabilitation Subcode, N.J.A.C. 5:23-6, as applicable. For projects that require construction permits, the rehabilitated unit shall be considered complete at the date of final approval pursuant to the Uniform Construction Code.
2. Municipal rehabilitation investment for hard costs shall average at least \$8,000 per unit, and include improvements necessary for the provision of low and moderate income housing.
3. If an owner-occupied housing unit is sold prior to the end of the controls on affordability, at least part of the loan shall be recaptured and used to rehabilitate another housing unit, unless the unit is sold to a low- or moderate-income household at an affordable price pursuant to N.J.A.C. 5:99-10.
4. If the municipality structures a loan program to recapture funds, recaptured funds shall be deposited into an affordable housing trust fund pursuant to N.J.A.C. 5:99-11.8 and subject to the provisions thereof.
5. Pursuant to N.J.A.C. 5:99-2.2(b), units that are eligible to receive new construction credit may be used to address a municipal rehabilitation share.

(c) Units in a rehabilitation program shall be exempt from UHAC, but shall be administered in accordance with the following:

1. For owner-occupied units, the controls on affordability shall be for a minimum of 10 years and may be in the form of a lien recorded with the county clerk.
2. For rental units, the controls on affordability shall be for a minimum of 10 years and in the form of a deed restriction and may also include a lien, each recorded with the county clerk.
  - i. If a unit is vacant, upon initial rental subsequent to rehabilitation, or if a renter-occupied unit is re-rented prior to the end of controls on affordability, the deed restriction shall require the unit to be rented to a low- or moderate-income household at an affordable rent and affirmatively marketed pursuant to N.J.A.C. 5:99-10.3 and UHAC.
  - ii. If a unit is renter-occupied, upon completion of the rehabilitation, the maximum rate of rent shall be the lesser of the current rent or the maximum permitted rent pursuant to N.J.A.C. 5:99-10.3(a) and UHAC.
  - iii. Rents in rehabilitated units may increase annually based on the standards in N.J.A.C. 5:99-10.3(b).
1. Applicant and/or tenant households shall be certified as income-eligible in accordance with N.J.A.C. 5:99-10 and UHAC, except that households in owner-occupied units shall be exempt from the regional asset limit.

2. The municipality shall demonstrate the capability to administer the program by designating an experienced administrative agent in accordance with N.J.A.C. 5:99-10.

(d) The following minimum documentation shall be submitted by the municipality with its petition for substantive certification:

1. Information regarding the rehabilitation program on forms provided by the Council;
2. Documentation demonstrating the source(s) of funding;
3. A municipal resolution appropriating funds or a resolution of intent to bond in the event of a shortfall of funds; and
4. A schedule illustrating how the rehabilitation share shall be addressed within the period of substantive certification;

(e) The administrator of the rehabilitation program shall maintain files on each program applicant. The files may be used in responding to monitoring requests and periodic programmatic and fiscal audits conducted by the Council, and to protect the municipality against charges of irregularity. The files shall include, at a minimum:

1. An application, including the name and address of each applicant;
2. If the applicant is not approved, the reasons for the disapproval; and
3. If the applicant is approved:
  - i. Proof of income eligibility;
  - ii. A copy of the deed of the property to be rehabilitated;
  - iii. Proof of homeowner insurance;
  - iv. Proof that the applicant's income is sufficient to meet the carrying costs of the unit;
  - v. Proof that the municipal lien plus the total of other liens does not exceed the market value of the unit;
  - vi. The initial inspection by the building inspector, demonstrating that the structure is a deficient unit;
  - vii. The work write-up and cost estimate;
  - viii. Bids by contractors, a minimum of three bids;
  - ix. The final contract to do the work;

- x. The payment schedule;
- xi. Progress inspections and reports;
- xii. Change orders;
- xiii. A copy of the final inspection;
- xiv. The lien and/or deed on the property; and
- xv. A copy of the mortgage note.

(f) A municipality receiving State aid pursuant to P.L. 1978, c. 14 (N.J.S.A. 52:27D-178 et seq.) may seek a waiver from addressing its entire rehabilitation component in one 10- year period of substantive certification. A municipality seeking such a waiver shall demonstrate that it cannot rehabilitate the entire rehabilitation component in 10 years and/or that an extraordinary hardship exists, related to addressing the entire rehabilitation component in 10 years.

## **SUBCHAPTER 7: FAIR SHARE OF PROSPECTIVE NEED**

### **5:99-7.1 New Construction General Requirements**

(a) A municipality shall consider the following techniques for providing low and moderate income housing within the municipality, as well as such other techniques as proposed by the municipality:

1. Rezoning for densities necessary to assure the realistic opportunity and economic viability of any inclusionary developments, through mandatory set-asides and density bonuses in addition to other incentives to the developer as may be necessary to meet all or part of the municipality's fair share.
  - i. The municipality shall provide an economic feasibility study for each site zoned for inclusionary development as detailed below in N.J.A.C. 5:99-7.2(b).
  - ii. The zoning shall be accompanied by a plan for infrastructure expansion and rehabilitation if necessary to assure the achievement of the municipality's affordable housing obligation;
2. Donation or use of municipally owned land or land condemned by the municipality for purposes of providing low and moderate income housing;
3. Provision of housing units in a community residence for the developmentally disabled, as defined in section 2 of P.L.1977, c.448 (C.30:11B-2), which shall be affordable to persons of low and moderate income.

4. Tax abatements for purposes of providing low and moderate income housing;
5. Use of public monies to make donations, grants or loans of public funds for provision of new or substantially rehabilitated housing for low and moderate persons; and
6. Utilization of municipally generated funds toward the construction of low and moderate income housing.

(b) New construction site criteria

1. Municipalities shall designate suitable sites that are approvable, developable and suitable, as defined in N.J.A.C. 5:99-1.2. In reviewing whether sites are realistic, the Council shall consider whether infrastructure is currently or imminently available. All sites designated for low and moderate income housing shall be consistent with the applicable area-wide water quality management plan (including the wastewater management plan) or be included in an amendment application filed prior to the grant of final substantive certification. If there is a denial by DEP within two years from the date the application is filed, then the Council shall revisit the viability of the site and housing plan to determine if it provides a realistic opportunity.
2. For each site designated for new construction of low and moderate income units, the municipality shall provide the following minimum documentation:
  - i. A general description of each site to be used for inclusionary development, including, but not limited to the following: acreage, current zoning, surrounding land uses, and street access. Maps (in electronic GIS format where available) shall be submitted showing the location of all sites;
  - ii. A description of any environmental constraints including steep slopes, wetlands and flood plain areas. The municipality shall include calculations of the amount of acreage that is environmentally constrained and any remaining buildable acreage. Documentation shall include the appropriate wetland and flood plain maps required pursuant to N.J.A.C. 5:99-4.2(a)11;
  - iii. Information shall be submitted regarding location, size and capacity of infrastructure lines and facilities within the service area, as well as the status of the applicable area-wide water quality management plan including the wastewater management plan. Documentation shall include maps showing the location of the sewer and water facilities; and
  - iv. For each site, the total number of housing units; the gross and net density of the proposed development; the total number of low and moderate income units; and the number of low and moderate income units that will be for sale and for rent.

(c) Municipalities shall structure plans for new construction, conversion and gut rehabilitation (including new construction, conversion and gut rehabilitation that was part of an RCA) that conform to the Council's rules and UHAC.

(d) Accessible and adaptable affordable units

1. The first floor of all newly constructed townhouse dwelling units and of all newly constructed multistory dwelling units that are attached to at least one other dwelling unit for which an application for a construction permit has not been declared complete by the enforcing agency before October 1, 2006, shall be subject to this subsection and the technical design standards of the Barrier Free Subcode at N.J.A.C. 5:23-7.5(a)6, provided the units are included in a municipal Fair Share Plan.
2. The Uniform Construction Code permit application submitted to the local enforcing agency shall include a plan to adapt the entrance to each townhouse or multistory dwelling unit that is subject to these regulations and that is not constructed with an accessible entrance.
  - i. Full compliance with this section shall not be required where an entity can demonstrate site impracticability consistent with the Barrier Free Subcode, N.J.A.C. 5:23-7.
3. The builder of the development shall deposit funds, sufficient to adapt 10 percent of the affordable units that have not been constructed with accessible entrances, with the municipality in which the units are located.
  - i. Upon release of the construction plans pursuant to the Uniform Construction Code (N.J.A.C. 5:23), the municipality shall deposit these funds in an affordable housing trust fund pursuant to N.J.A.C. 5:99-11. These funds shall be available for the purpose of making the adaptable entrance of any affordable unit accessible when requested to do so by a person with a disability who occupies or intends to occupy the unit and requires an accessible entrance.
  - ii. In the case of a unit constructed with an adaptable entrance, upon the request of a disabled person who is purchasing or who will reside in the dwelling unit, the accessible entrance that complies with the released construction plans shall be installed or constructed, as the case may be. The funds escrowed in the municipal affordable housing trust fund shall be used to effect the adaptation of the entrance to accommodate the resident with a disability.

5:99-7.2 **Inclusionary Zoning Requirements**

(a) General Requirements

1. Inclusionary zoning ordinances shall be accompanied by an Economic Feasibility Study pursuant to N.J.A.C. 5:99-7.2(b) demonstrating a rational nexus between the density and affordable housing set-asides contained in the zoning and that the zoning provides adequate compensatory benefits to developers of affordable housing.
2. The proposed zoning for an inclusionary development shall be premised on a 10 percent set aside that may be adjusted based on the municipality's Economic Feasibility Study or

new construction obligation.

3. The Council, upon the joint application of a municipality and a developer, may approve reduced affordable housing set-asides or increased densities to ensure the economic feasibility of an inclusionary development

4. Municipal Housing Elements and Fair Share Plans, and resolutions of approval as applicable, shall allow for phased construction pursuant to N.J.A.C. 5:99-7.2(c) and phased performance guarantees for on-site, off-site and off-tract improvements required of affordable housing developments.

5. Inclusionary zoning ordinances shall require that affordable units utilize the same heating source as market-rate units within the inclusionary development and have access to all community amenities available to market-rate units and subsidized in whole by association fees.

6. Inclusionary zoning ordinances shall require that the first floor of all townhouse dwelling units and all other multistory dwelling units comply with N.J.A.C. 5:99-7.1(d).

(b) Economic Feasibility and Compensatory Benefits

1. All sites proposed for inclusionary development in a Fair Share Plan shall be accompanied by an Economic Feasibility Study which shall consider densities and set-asides that are sufficient to address total prospective need. The study shall compare pre and post zone change conditions and include the following:

- i. An assessment of the cost to build market rate units.
- ii. An assessment of the cost to build affordable units.
- iii. An assessment of the cost to build and operate rental units.
- iv. An assessment of capital markets.
- v. An assessment of whether the rate of return is sufficient to attract developers.
- vi. Identification of set asides and density bonuses as well as other effective affirmative planning and zoning devices being used.
- vii. Analysis of unnecessary cost producing requirements or restriction that could be eliminated or additional affirmative planning and zoning devices that could be used if a site as originally proposed is determined not to provide a realistic opportunity and an analysis of the effectiveness of compensatory benefits provided to the developer.
- viii. An assessment of market demands for particular housing types (e.g. single family homes, townhouses, garden apartments, etc.) and an analysis of the potential impact of absorption rates for different housing types on proposed zoning.

- ix. An assessment of how the development will affect the character of the community.
  - x. Any other factors necessary to determine if the site provides a realistic opportunity for the construction of affordable housing.
  - xi. A certification or certifications by the individual or group that conducted the economic feasibility study that, based on the study, each site in a municipality's housing element designated for the production of affordable housing provides a realistic opportunity for the construction of that housing.
2. Compensatory benefits shall be available to the developer of an inclusionary site and reviewed in the Economic Feasibility Study. Municipalities shall use the standards set forth at N.J.S.A. 40:55D-40.1 through 40.7 as a frame of reference. Municipalities that intend to impose more stringent standards shall bear the burden of justifying the need for such standards. In its review of municipal ordinances, the Council shall give special attention to:
- i. Evidence of incentives and/or cost reductions to developers of affordable housing involving building setbacks, building height and/or stories, spacing between buildings, and impervious surface standards.
  - ii. Removal of requirements to provide oversized water and sewer mains, as well as stormwater management provisions including culverts, to accommodate future development without a reasonable prospect for reimbursement;
  - iii. Removal of excessive road width, pavement specifications and parking requirements.
  - iv. Density bonuses that bear a rational nexus between increased costs directly attributable to affordable housing requirements and value enhancements that result from increased development yield.
  - v. The combined impact of requirements that cumulatively prevent an inclusionary development from achieving the density and set-aside necessary to address the municipal fair share. Examples of such requirements include but are not limited to: building set-backs, spacing between buildings, impervious surface requirements and open space requirements;
  - vi. Excessive requirements for sidewalks, paved paths, culvert, pumping station requirements, landscape, buffering and reforestation requirements.
3. Failure to provide an appropriate density or remove unnecessary cost generative requirements on an affordable housing development application shall be considered a reason for determination that the zoning on an inclusionary site is not realistic.

(c) Phasing criteria

- 1. Municipal housing elements and fair share plans shall allow for phased construction and phased bonding of on-site, off-site and off-tract improvements required of inclusionary developments.



2. Municipalities zoning for inclusionary development shall require low and moderate income housing units to be built in accordance with the following schedule:

Minimum Percentage of Low and Moderate Income Units Completed	Percentage of Market Housing Units Completed
0	10
25	25 + 1 unit
50	50
75	75
100	90

3. A newly constructed unit is considered complete when the certificate of occupancy is issued.

4. If the phasing schedule above is not feasible due to the nature of the development, the municipality shall require a phasing schedule and/or a performance guarantee that ensures the affordable housing units are completed prior to the completion of the market rate units in a particular development.

(d) Payments in lieu of construction

1. Inclusionary developments shall integrate low and moderate income units with the market units, to the extent it is economically feasible to do so; alternatively, the ordinance may allow the developer the option of providing the units elsewhere in the municipality or making a payment in lieu of providing the whole or fractional affordable units required by the zoning, subject to the following:

- i. Payments in lieu shall only be permitted when a municipality can demonstrate why a site that has been determined to be economically feasible for the construction of affordable housing should not have affordable housing built on site.
- ii. Payments in lieu of constructing affordable units may represent fractional affordable units where the number of affordable units required as a result of a strict application of a required set-aside percentage results anything other than a whole number of affordable units.
- iii. The zoning ordinance may include specific criteria to be met for a development to be eligible to provide a payment in lieu. Examples of such criteria include but are not limited to environmental or site configuration concerns that were not fully contemplated within the Economic Feasibility Study. Once criteria are established by ordinance, exercising the option shall be at the developer's discretion.
- iv. The amount of payments in lieu of constructing affordable units on site shall be established by ordinance and based on the net cost of subsidizing affordable housing within the municipality after considering estimated land values and development costs associated with compliance techniques included in the municipality's Fair Share Plan and Spending Plan. The cost of constructing new residential units includes the sum of development hard costs, related soft costs and

developer's fees pursuant to the cost containment provisions of N.J.A.C. 5:43-2.4(a)1 through 6 and land costs based on the first quartile of land values for comparable housing types within the municipality. Amounts required by ordinance shall be based on a net cost of producing affordable units that offsets reasonable delivery costs with proceeds anticipated from the sale of the unit and/or the capitalization of rental income. Anticipated proceeds from the sale or rental of affordable units shall be calculated to conform to the income stratification and bedroom distribution criteria outlined in N.J.A.C. 5:80-26.1 et seq. Payment in lieu amounts shall be re-established periodically but not less frequently than once every five years. Payment in lieu amounts shall also bear a rational nexus to the contemplated delivery techniques included in municipal Fair Share Plan.

- v. Payments in lieu of constructing affordable units shall be deposited into an affordable housing trust fund pursuant to N.J.A.C. 5:99-11.6 and subject to the provisions thereof.
- vi. Payments in lieu of constructing affordable housing shall not be permitted in a zone or on a site without an affordable housing requirement. Zoning that does not require an affordable housing set-aside or permit a corresponding payment in lieu may be subject to a development fee ordinance pursuant to N.J.A.C. 5:99-11.3.

**5:99-7.3 New construction; municipally owned land and 100 percent affordable construction**

(a) Municipally sponsored and 100 percent affordable developments include, but are not limited to:

1. Developments in which all units are available to low- and moderate-income households;
2. Units created through a municipal partnership with a non-profit or other affordable housing provider; and
3. Developments for which the municipality serves as the primary sponsor.

(b) Municipally sponsored and 100 percent affordable developments shall comply with N.J.A.C. 5:99-7.1.

1. If the municipality is sponsoring a community residence for the developmentally disabled, the requirements of N.J.A.C. 5:99-7.4 shall apply.

(c) The following minimum documentation shall be submitted with the municipality's petition for substantive certification:

1. A demonstration that the municipality or developer/sponsor has site control or has the ability to control the site(s). Control may be in the form of outright ownership, a contract to

purchase or an option on the property;

2. A description of the site, including the street location, block and lot, and acreage;
3. A demonstration of the suitability of the site;
4. A request for proposals (RFP) or executed agreement, including a schedule for the construction of the units, with the developer or sponsor; or documentation that the development has received preliminary or final approvals; and
5. Detailed information demonstrating that the municipality or developer has adequate funding capabilities. The documentation shall include:
  - i. A pro forma statement for the project; and
  - ii. Evidence of adequate and stable funding. If State and/or Federal funds will be used, documentation shall be provided indicating the available funding and any pending applications. In the case where an application for outside funding is pending, a stable alternative source such as municipal bonding shall be provided in the event the funding request is not approved. As outside funds become available, the municipality may reduce its reliance on municipal sources.

(d) The following documentation shall be submitted prior to marketing the completed units:

1. A draft or adopted operating manual that includes a description of the program procedures and administration in accordance with UHAC;
2. An affirmative marketing plan in accordance with UHAC; and
3. Designation of an experienced administrative agent, including a statement of his or her qualifications, in accordance with N.J.A.C. 5:98-18.

#### 5:99-7.4 **Community residences for the developmentally disabled**

(a) The following provisions shall apply to community residences for the developmentally disabled:

1. The unit of affordable housing shall be the bedroom.
2. Housing that is age-restricted shall be included with the maximum number of units that may be age-restricted pursuant to N.J.A.C. 5:99-4.3(a)6.
3. Occupancy shall not be restricted to youth under 18 years of age.
4. All sites shall meet the site suitability criteria set forth in N.J.A.C. 5:99-4.3 and 7.1(b).
5. The municipality or developer/sponsor shall have site control or the ability to control

the site(s).

(b) The bedrooms and/or units pursuant to (a)above shall comply with N.J.A.C. 5:99-10 and UHAC with the following exceptions:

1. Community residences for the developmentally disabled shall be affirmatively marketed to individuals with special needs in accordance with a plan approved by the Council's Executive Director;
2. Affordability average and bedroom distribution; and
3. With the exception of units established with capital funding through a 20-year operating contract with the Department of Human Services, Division of Developmental Disabilities, community residences for the developmentally disabled shall have the appropriate controls on affordability in accordance with N.J.A.C. 5:99-10 and UHAC.

(c) The following minimum documentation for community residences for the developmentally disabled shall be submitted by the municipality with its petition for substantive certification:

1. Information regarding the development;
2. A description of the site, including the street location, block and lot, and acreage;
3. A demonstration of the suitability of the site;
4. A demonstration that the municipality or provider has site control or has the ability to control the site(s); control may be in the form of outright ownership, a contract to purchase or an option on the property;
5. An executed agreement, including a schedule for the construction of the development, with the provider, sponsor or developer;
6. A pro forma for the development;
7. Documentation demonstrating the source(s) of funding; and
8. A municipal resolution appropriating funds or a resolution of intent to bond in the event of a shortfall of funds.

(d) The following documentation shall be submitted prior to marketing the completed units or facility:

1. An affirmative marketing plan in accordance with (b)1 above; and
2. Proof that the community residences for the developmentally disabled is regulated by the New Jersey Department of Human Services or another State agency in accordance with the requirements of this section, which includes validation of the number of bedrooms or units in which low- or moderate-income occupants reside.

**5:99-7.5      Redevelopment and Rehabilitation pursuant to the Local Redevelopment and Housing Law, N.J.S.A 40A:12A-1 et seq.**

(a) The following provisions shall apply to affordable housing units proposed in a redevelopment area or rehabilitation area:

1. All sites shall meet the site suitability criteria set forth in N.J.A.C. 5:99-4.3 and 7.1(b).
2. The municipality shall designate the site as an area in need of redevelopment or rehabilitation.
3. The municipality shall adopt a redevelopment plan.
4. The redevelopment agreement shall comply with N.J.A.C. 5:99-7.2(b).
5. The municipality shall issue a request for proposals for a designated redeveloper, if applicable.

(b) The units shall comply with N.J.A.C. 5:99-10 and UHAC.

(c) The following minimum documentation shall be submitted with the municipality's petition for substantive certification:

1. Demonstration that the resolution designating the area in need of redevelopment or rehabilitation has been approved by DCA, if required by the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq. at the time the area was so designated;
2. A redevelopment plan adopted by the governing body which includes the requirements for affordable housing;
3. Information and documentation in accordance with N.J.A.C 5:99-7.1(b) and 7.2; and
4. An anticipated timeline and development process expected for the site.

(d) The following minimum documentation shall be submitted by the municipality prior to the grant of substantive certification or in accordance with phasing schedule that has been approved by the Council:

1. A demonstration that the municipality or redeveloper either has site control or a plan in place for obtaining site control, in accordance with the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq.;
2. An executed redevelopment agreement that results in the creation of affordable housing and which shall include the following:
  - i. A description of the number, tenure and type of units;

- ii. A schedule for the overall redevelopment plan, including the phasing of residential development pursuant to N.J.A.C. 5:99-7.2(c); and
  - iii. Compliance with N.J.A.C. 5:97-6.4(i) through (k); and
3. Demonstration that any affordable units being removed as a result of the redevelopment or rehabilitation are being replaced on a one for one basis in accordance with .J.S.A. 40A:12A-7.
- (e) The following documentation shall be submitted prior to marketing the completed units:
- 1. A draft or adopted operating manual that includes a description of the program procedures and administration in accordance with UHAC;
  - 2. An affirmative marketing plan in accordance with UHAC, except that low- and moderate-income households that have been displaced in areas designated in need of redevelopment or areas in need of rehabilitation pursuant to the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq., may be provided a preference over other applicants for referral to the newly created restricted units within the redevelopment area, provided that households otherwise meet all certification requirements set forth at N.J.A.C. 5:80-26.6; and

## **SUBCHAPTER 8: REVOCATION OF SUBSTANTIVE CERTIFICATION**

### **5:99-8.1 Council action leading to revocation of substantive certification**

- (a) A Council determination, after a hearing conducted pursuant to the Administrative Procedure Act, N.J.S.A. 52:148-1 et seq., that a municipality has delayed action on an inclusionary development application, required unnecessary cost generating standards or obstructed the construction of an inclusionary development may result in Council action revoking substantive certification.

## **SUBCHAPTER 9: REGIONAL CONTRIBUTION AGREEMENTS**

### **5:99-9.1 Regional Contribution Agreement (RCA)**

(a) Pursuant to P.L.2008, c.46, the Council shall not consider any RCAs which were not granted approval by the Council or the Court prior to July 17, 2008. If the receiving municipality intends to utilize funds for a use other than what was approved in the project plan, it shall seek a Project Plan Amendment in accordance with (b) below.

(b) Project Plan Amendment shall be in such a form and contain such information as the Council or the Agency may require, and shall include, but not be limited to:

1. the names of the project(s) and/or program(s) and the number of affordable units funded by the RCA;
2. development costs, additional sources of funding for the projects or programs;
3. applicability to the Council and UHAC rules; and
4. the agent responsible for administering the affordable units.

### **5:99-9.2 General provisions**

(a) Municipalities that have received RCA approval from the Council or the Court shall continue to comply with the terms of the RCA contract and approved project plan.

(b) RCA funds and recaptured RCA funds shall be deposited into a separate interest bearing escrow account for each RCA.

(c) A receiving municipality shall enter into an escrow agreement with the Council and the bank that holds the escrow account, whereby the Council has access to the escrow account.

(d) A receiving municipality shall continue to designate a RCA Administrator pursuant to N.J.A.C. 5:98-19 and, subject to the Council's approval, appoint a municipal employee to serve in that position.

(e) The RCA Administrator of the receiving municipality shall submit monitoring reports to the Council setting forth fiscal accountability and progress in implementing the projects to be produced under the RCA. These reports shall be submitted at such time and in such form as the Council and the Agency may require.

#### 5:99-9.3 **Project Plan Amendments**

- (a) The receiving municipality shall submit a completed RCA Project Plan Amendment application to the Agency and Council delineating the manner in which the receiving municipality shall create or rehabilitate low- and moderate-income housing in response to the RCA.
- (b) The Agency shall review and provide the Council with a recommendation regarding the financial feasibility of the RCA Project Plan Amendment prior to the Council's approval of the Project Plan Amendment.
- (c) A RCA Project Plan Amendment shall be approved by resolution upon a finding by the Council that:
  - 1. The receiving municipality's Project Plan Amendment is a financially feasible means of achieving the purposes of the RCA, as determined by the Agency.
  - 2. All units created or rehabilitated with the RCA funds are complying with N.J.A.C. 5:93-1 et seq. and UHAC, as applicable.
  - 3. Upon recommendation of the Agency, the Council may approve, as part of the RCA, a provision that the time limitations for contractual guarantees or resale controls for low and moderate-income units included in the proposed RCA Project Plan Amendment may be for less than 30 years if the Agency determines that modification is necessary to assure the economic viability of the project.

#### 5:99-9.4 **Excess RCA funds**

- (a) The use of all funds shall be specified in an RCA Project Plan and shall be subject to Council approval. If there are funds in excess of the amount necessary to implement the RCA, the balance may be used within the receiving municipality on the type of project approved in the project plan. If the receiving municipality intends to utilize the excess funds for a use other than what was approved in the project plan, it shall seek a Project Plan Amendment in accordance with N.J.A.C. 5:99-9.3 above.

#### 5:99-9.5 **Enforcement**

- (a) The Council shall take such actions as may be necessary to enforce an RCA with respect to the timely implementation of a project by the receiving municipality. Such actions may include, but are not limited to, one or more of the following:
  - 1. Initiating a lawsuit to enforce an RCA contract;



2. Ordering the receiving municipality's bank to cease disbursements from the RCA escrow account;
3. Ordering the receiving municipality to amend its RCA Project Plan to include viable alternative housing activity;
4. Directing the use of RCA funds to eligible housing activity in the municipality, county, or region; or
5. Such other actions as the Council may determine necessary.

## **SUBCHAPTER 10: ADMINISTRATION OF AFFORDABLE UNITS**

### **5:99-10.1 Applicability of UHAC**

(a) Affordable housing included in a municipal Fair Share Plan shall comply with UHAC. The units shall comply with this subchapter and UHAC with the following exemptions/exceptions:

1. A judgment of foreclosure or a deed in lieu of foreclosure to a financial institution regulated by State and/or Federal law or to a lender on the secondary mortgage market (including, but not limited to, the Federal National Mortgage Association, the Home Loan Mortgage Corporation, the Government National Mortgage Association or an entity acting on their behalf) shall extinguish controls on affordable housing units provided there is compliance with N.J.A.C. 5:99-10.2. Notice of foreclosure shall allow the administrative entity, the municipality, the DCA, the Agency or a non-profit entity to purchase the affordable housing unit at a negotiated price not to exceed the maximum sales price and maintain it as an affordable unit for the balance of the intended period of controls. Failure to purchase the affordable housing unit shall result in the Council adding that unit to the municipal present and prospective fair share obligation.
2. In the event of a foreclosure sale, the owner of the affordable housing unit shall be personally obligated to pay to the administrative entity responsible for assuring affordability, any surplus funds, but only to the extent that such surplus funds exceed the difference between the sales price at the time of foreclosure and the amount necessary to redeem the debt to the financial institution, including costs of foreclosure.
3. The affordability controls amended by this subchapter shall be applied to units in the forms of the appendices attached to this subchapter.
4. The condominium or homeowner association fee of the affordable units must be proportionate to the square footage and/or lower cost of the affordable unit relative to the market rate units.

5. All units regulated by this subchapter must include the Housing Resource Center, the State's free online listing service at [www.njhrc.gov](http://www.njhrc.gov), as a part of the affirmative fair marketing plan.

6. Administrative Agents may grant a waiver of the income qualification requirement for units where a buyer has not been identified for an extended period of time and where the Administrative Agent has developed a set of criteria to determine that a waiver is necessary due to a lack of qualified applicants. This waiver shall not change the deed restriction in any way on the unit and the next sale shall be conducted according to the regulations.

#### **5:99-10.2 Regional Income Limits**

(a) Administrative agents shall utilize the regional income limits established by the Council for the purpose of pricing affordable units and determining income eligibility of households.

(b) Regional income limits shall be established by the Council based on the median income by household size, which shall be established by a regional weighted average of the uncapped Section 8 income limits published by HUD. To compute this regional income limit, the HUD determination of median county income for a family of four is multiplied by the estimated households within the county. The resulting product for each county within the housing region is summed. The sum is divided by the estimated total households in each housing region. This quotient represents the regional weighted average of median income for a household of four. This regional weighted average is adjusted by household size based on multipliers used by HUD to adjust median income by household size.

(c) The Executive Director shall annually approve the regional income limits based on household size. In no event shall the income limits be less than the previous year.

#### **5:99- 10.3 Establishing sale prices and rents of units**

(a) In establishing sale prices and rents of affordable housing units, the administrative agent shall follow the procedures set forth in UHAC, utilizing the regional income limits established by the Council.

(b) The price of owner-occupied low- and moderate-income units may increase annually based on the percentage increase in the regional median income limit for each housing region. In no event shall the maximum resale price established by the administrative agent be lower than the last recorded purchase price.

(c) The rent of low- and moderate-income units may be increased annually based on the percentage increase in the Housing Consumer Price Index for the United States. This increase shall not exceed nine percent in any one year. Rents for units constructed pursuant to low income housing tax credit regulations shall be indexed pursuant to the regulations governing low income housing tax credits.

## **SUBCHAPTER 11: AFFORDABLE HOUSING TRUST FUNDS**

### **5:99-11.1 Purpose**

- (a) Affordable housing trust funds are intended to better enable municipalities to meet the low- and moderate-income housing needs in their municipality and region within the timeframes established by the Legislature.
- (b) Affordable housing trust funds may contain mandatory development fees, payments in lieu of constructing affordable units on sites zoned for affordable housing, funds in a sbarrier free escrow, recapture funds, proceeds from the sale of affordable units, rental income, repayments from affordable housing program loans, enforcement fines and application fees, and any other funds collected by the municipality in connection with its affordable housing programs, as permitted by the Council.
- (c) A municipality may impose, collect and spend affordable housing trust funds only through participation in the Council's substantive certification process or through a comprehensive review designed to achieve a judgment of compliance.
- (d) A municipality under the Council's or a court of competent jurisdiction shall not spend affordable housing trust funds unless the Council has approved a plan for spending such funds in conformance with N.J.A.C. 5:98-5.4.
- (e) The rules in this subchapter shall govern those municipalities that petition for substantive certification as well as the development fee ordinances and spending plans of municipalities under the jurisdiction of a court of competent jurisdiction.

### **5:99-11.2 Account requirements**

- (a) All affordable housing trust funds shall be deposited in a separate, interest-bearing account. In establishing the account, the municipality shall provide written authorization, in the form of a three-party escrow agreement between the municipality, the bank and the Council, to permit the Council to direct the disbursement of the funds as provided for in N.J.A.C. 5:99-11.15. This authorization shall be submitted to the Council within seven days from the opening of the trust fund account.
- (b) With the approval of the Council and of the Division of Local Government Services, the municipality may invest its affordable housing trust fund in the State of New Jersey cash management fund, provided that the amount of money in the cash management fund that comprises the funds and income attributable to such funds shall at all times be identifiable. The municipality shall provide written authorization, in the form of a three- party escrow agreement between the municipality, the bank which holds the account linked to the cash

management fund, and the Council, to permit the Council to direct the disbursement of development fees as provided for in N.J.A.C. 5:99-11.15(b). This authorization shall be submitted to the Council within seven days from the opening of the trust fund account.

(c) All interest accrued in the housing trust fund shall only be used on eligible affordable housing activities approved by the Council.

### 5:99-11.3 General development fee ordinance requirements

(a) No municipality, except municipalities seeking to achieve or that have received a judgment of compliance, shall impose or collect development fees unless the municipality has petitioned the Council with an adopted Housing Element and Fair Share Plan and the Council has approved the municipality's development fee ordinance pursuant to N.J.A.C. 5:98-5.

(b) Pursuant to P.L. 2008, c. 46, section 8 (N.J.S.A. 52:27D-329.2) and the Statewide Non-Residential Development Fee Act, N.J.S.A. 40:55D-8.1 through 8.7, and any moratoriums from or amendments thereto, municipalities that are under the jurisdiction of the Council or a court of competent jurisdiction may retain fees collected from non-residential development as permitted by the Statewide Non-Residential Development Fee Act.

(c) Municipalities shall collect 100 percent of the development fee on residential and non-residential development at or prior to the issuance of the certificate of occupancy.

1. Municipalities may collect up to 50 percent of the development fee at the time of issuance of the building permit. The remaining portion shall be collected at or prior to the issuance of the certificate of occupancy. Developers shall be notified of the fee by the municipality, including when payment is required to be made, at the time of application for permit or approval.

2. For residential developers, regardless of the time of collection, or the date of approvals, the fee shall be based on the residential development fee percentage that applies on the date that residential building permits are issued.

3. For non-residential developers, as of July 17, 2008 the fee shall be based on the non-residential development fee percentage that applies pursuant to the Non-Residential Development Fee Act at sections 32 through 38 of P.L. 2008, c. 46 (N.J.S.A. 40:55D-8.1 through 40:55D-8.7).

(d) Imposed and collected development fees that are challenged shall be placed under protest in an interest bearing escrow account by the municipality. The local code enforcement official shall thereafter issue the certificate of occupancy provided that the construction is otherwise eligible for a certificate of occupancy. If all or a portion of the contested fees are returned to the developer, the accrued interest on the returned amount shall also be returned. A developer may challenge non-residential development fees imposed pursuant to P.L. 2008, c. 46 (N.J.S.A. 52:27D-329.1 et al.) by filing a challenge with the Director of the Division of Taxation. Pending a review and determination by the Director, which shall be made within 45 days of receipt of the

challenge, collected fees shall be placed in an interest bearing escrow account by the municipality or by the State, as the case may be. Appeals from a determination of the Director may be made to the tax court in accordance with the provisions of the State Uniform Tax Procedure Law, N.J.S.A. 54:48-1 et seq., within 90 days after the date of such determination. Interest earned on amounts escrowed shall be credited to the prevailing party.

(e) Any ordinance adopted by a municipality for the purpose of imposing and collecting development fees shall provide that, in the event any of the conditions described in N.J.A.C. 5:99-11.15 occur, the Council shall be authorized, on behalf of the municipality, to direct the manner in which all funds in the affordable housing trust fund shall be expended.

(f) A municipality that collects or anticipates collecting development fees must identify the funds on its monitoring report pursuant to N.J.A.C. 5:99-11.14 and include a plan for the use of the funds in its spending plan pursuant to N.J.A.C. 5:99-11.12.

#### 5:99-11.4 **Residential development fees**

(a) Residential development fees shall be a maximum of one and one half percent of the equalized assessed value (EAV), provided no increased density is permitted.

1. When a municipality approves an increase in residential density pursuant to N.J.S.A. 40:55D-70d(5) (known as a “d” variance), the municipality may impose an additional development fee of up to six percent of the equalized assessed value (EAV), for each additional unit that may be realized. However, if the zoning on a site has changed during the two-year period preceding the filing of such a variance application, the density for the purposes of calculating the bonus development fee shall be the highest density permitted by right during the two-year period preceding the filing of the variance application.

2. Fees may be imposed on the construction of new residential development and additions and alterations to existing development. Ordinances governing the imposition of development fees shall clearly indicate which types of development shall be subject to the imposition of development fees. New construction fees shall be based on the equalized assessed value of land and improvements. Fees that result from additions and alterations shall be based on the increase in equalized assessed value that results only from the addition or alteration.

(b) The following are eligible exactions, ineligible exactions, and exemptions for residential developments:

1. Affordable housing developments, affordable housing developments where the affordable units are being provided elsewhere in the municipality, and developments where the developer has made a payment in lieu of constructing affordable units shall be exempt from development fees.

2. Development fees may be imposed and collected when an existing structure is expanded, undergoes a change to a more intense use, or is demolished and replaced. The development

fee that may be imposed and collected shall be calculated on the increase in the equalized assessed value resulting from the expansion, change to a more intense use, or replacement.

3. Developments that have received preliminary or final site plan approval prior to the adoption of a municipal development fee ordinance shall be exempt from development fees, unless the developer seeks a substantial change in the approval. Where a site plan approval does not apply, a zoning and/or construction permit shall be synonymous with preliminary or final site plan approval for this purpose.

4. Municipal development fee ordinances may exempt specific types of residential development from fees or may impose lower fees for specific types of development, provided each classification of development is addressed consistently. Examples include, but are not limited to, exempting or reducing the fee for improvements where the equalized assessed value does not exceed a threshold minimum determined by the municipality, developments with one or two owner-occupied dwelling units, or green buildings.

5. Municipalities may exempt specific residential areas or zones of the municipality from the imposition of fees or reduce fees in order to promote development in specific areas of the municipality. Examples include, but are not limited to, exempting all residential developments within a one-half-mile radius of the Main Street train station or areas in need of redevelopment pursuant to N.J.S.A. 40:12A-1 et seq. from the imposition of fees.

6. Residential structures demolished and replaced as a result of a fire, flood, or any natural disaster shall be exempt from paying the entire residential development fee.

#### **5:99-11.5 Non-residential development fees**

(a) Subsequent to July 17, 2008, non-residential development fees shall be imposed pursuant to the Statewide Non-Residential Development Fee Act, N.J.S.A. 40:55D-8.1 through 8.7, and any moratoriums from or amendments thereto.

(b) A developer of property that received preliminary site plan approval, pursuant to N.J.S.A. 40:55D-46, or final approval pursuant to N.J.S.A. 40:55D-50 prior to July 17, 2008 and that was subject to the payment of a validly imposed municipal non-residential development fee ordinance shall continue to be subject to the conditions of the municipally imposed fee.

(c) Except as expressly provided in P.L. 2008, c. 46 (N.J.S.A. 52:27D-329.2), any provision of a local ordinance which imposes a fee for the development of affordable housing upon a developer of non-residential property, including any and all development fee ordinances adopted in accordance with the Council's regulations, or any provision of an ordinance which imposes an obligation relating to the provision of housing affordable to low- and moderate-income households, or payment in-lieu of building as a condition of non-residential development, shall be void and of no effect. A provision of an ordinance which imposes a non-residential development fee which is not prohibited by any provision of N.J.S.A. 52:27D-329.1, shall not be invalidated.

(d) Any municipality that is not in compliance with the requirements of the Non-residential Development Fee Act or the Department's rules may be subject to forfeiture of any or all funds remaining within its municipal development trust fund pursuant to N.J.A.C. 5:97-8.15. Any funds so forfeited shall be deposited into the New Jersey Affordable Housing Trust Fund established pursuant to section 20 of P.L. 1995, c. 222 as amended by section 17 of P.L. 2008, c. 46 (N.J.S.A. 52:27D-320).

(e) The Council shall maintain on its website a list of each municipality that is authorized to use the non-residential development fees collected pursuant to this section and that has a confirmed status of compliance with the Fair Housing Act, P.L. 1995, c. 222 (N.J.S.A. 52:27D-301 et al.), which compliance shall include a spending plan authorized by the Council for all development fees collected.

#### **5:99-11.6 Payments in lieu of constructing affordable units on site**

(a) A municipality may, as an option to the on-site construction of affordable housing otherwise required by ordinance, provide for a payment in lieu of construction subject to the requirements of this section and N.J.A.C. 5:99-7.5.

(b) The amount of payments in lieu of constructing affordable units on site shall be established by ordinance and be consistent with the amounts detailed in N.J.A.C. 5:99-7.5

(c) Payments-in-lieu shall not be imposed on any non-residential development,

(d) A municipality that collects or anticipates collecting payments in lieu of construction must identify the funds on its monitoring report pursuant to N.J.A.C. 5:99-11.14 and include a plan for the use of the funds in its spending plan pursuant to 5:99-11.12.

(e) Payment-in-lieu fees shall be deposited into a trust fund, and accounted for separately from any other fees collected by a municipality. Whenever a payment-in-lieu is charged by a municipality pursuant to this subsection, a development fee authorized pursuant to section 8 of P.L. 2008, c. 46 (N.J.S.A. 52:27D-329.2) shall not be charged in connection with the same development.

#### **5:99-11.7 Barrier free escrow**

An affordable housing trust fund may contain fees collected to adapt affordable unit entrances to be accessible in accordance with the Act and N.J.A.C. 5:99-7.8(CITE). The municipality shall set forth the mechanism by which it will collect and distribute funds intended to convert adaptable entrances. Funds collected for this purpose must at all times be identifiable from other funds. A municipality that collects or anticipates collecting funds to adapt affordable unit entrances must identify the funds on its monitoring report pursuant to N.J.A.C. 5:99-11.14.

**5:99-11.8 Other funds**

An affordable housing trust fund may also contain recapture funds, proceeds from the sale of affordable units, rental income, repayments from affordable housing program loans, enforcement fines and application fees, and any other funds collected by the municipality in connection with its affordable housing programs. A municipality that collects or anticipates collecting such fees must identify the funds on its monitoring report pursuant to N.J.A.C. 5:99-11.14 and include a plan for the use of the funds in its spending plan pursuant to N.J.A.C. 5:99-11.12.

**5:99-11.9 Use of funds for housing activity**

(a) A municipality may use affordable housing trust funds for any housing activity as itemized in the spending plan and approved by the Council. Such activities include, but are not limited to:

1. A rehabilitation program;
2. New construction of affordable housing units and related development costs; in the case of inclusionary developments, eligible costs shall be pro-rated based on the proportion of affordable housing units included in the development;
3. Extensions or improvements of roads and infrastructure directly serving affordable housing development sites; in the case of inclusionary developments, costs shall be pro-rated based on the proportion of affordable housing units included in the development;
4. RCAs, approved prior to July 17, 2008;
5. Acquisition and/or improvement of land to be used for affordable housing;
6. Accessory apartment;
7. Green building strategies designed to be cost-saving for low- and moderate- income households, either for new construction that is not funded by other sources, or as part of necessary maintenance or repair of existing units, in accordance with accepted national or state standards or such guidance as may be provided by DCA or the New Jersey Housing and Mortgage Finance Agency;
8. Maintenance and repair of affordable housing units;
9. To defray the costs of structured parking; in the case of inclusionary developments, eligible costs shall be pro-rated based on the proportion of affordable housing units included in the development;
10. Repayment of municipal bonds issued to finance low- and moderate-income housing activity; and



11. Any other activity as specified in the approved spending plan.

(b) Municipalities are encouraged to use affordable housing trust funds to attract other funds such as, but not limited to, available public subsidies and funds from private lending institutions.

(c) Municipalities are encouraged to work cooperatively with residential and/or non-residential developers subject to development fees to identify specific affordable housing projects within the municipality for funding from the affordable housing trust fund.

#### 5:99-11.10 Use of funds for affordability assistance

(a) At least 30 percent of all development fees collected and interest earned shall be used to provide affordability assistance to low- and moderate-income households in affordable units included in the municipality's Fair Share Plan. At a minimum, a municipality shall use one-third of the affordability assistance portion to provide affordability assistance to very low income households to assist in reserving 13 percent of the low income units within a municipality to very low-income households.

1. Affordability assistance programs may include down payment assistance, security deposit assistance, low interest loans, rental assistance, assistance with homeowners association or condominium fees and special assessments, common maintenance expenses and assistance with emergency repairs.

2. Affordability assistance for very low income households may include offering a subsidy to developers of inclusionary or 100 percent affordable developments or buying down the cost of low- or moderate-income units in a municipal Fair Share Plan to make them affordable to very low income households including special needs and supportive housing opportunities. .

Example: A 100-unit development in a municipality consists of 80 market-rate rental units, 10 moderate-income rental units and 10 low-income rental units. Two of the low-income units are priced to be affordable to a household earning 30 percent of regional median income (RMI). The remaining eight low-income units are priced to be affordable to households earning 45 percent of RMI. The rental rate established for the units priced at a 45 percent level of affordability is \$603.00 per month while the rental rate established for units priced at a 30 percent level of affordability is \$353.00 for a difference of \$250.00 per month or \$3,000 per year. Assuming a capitalization rate of 8.5 percent would establish a 30-year present value of \$35,294 on the reduced rental income. Therefore, a developer might consider re-pricing low-income units to provide additional very- low income units in exchange for an up-front lump sum payment of \$35,294 for each unit re-priced.

(b) Subject to the approval of the Council, municipalities may contract with a private or public entity to administer any part of its Housing Element and Fair Share Plan, including the requirement for affordability assistance, in accordance with N.J.A.C. 5:98-18.

- (c) If the municipality demonstrates that there are no units for which affordability assistance programs can be offered, this requirement may be waived.

**5:99-11.11 Use of funds for administrative expenses**

- (a) No more than 20 percent of all affordable housing trust funds collected prior to July 17, 2008, exclusive of the fees used to fund an RCA, shall be expended on administration.
- (b) No more than 20 percent of all development fee revenue collected on or after July 17, 2008, shall be expended on administration.
- (c) Administrative expenses may include fees necessary to develop or implement an affordable housing program, a Housing Element and Fair Share Plan, and/or an affirmative marketing program. Administrative funds may be used for income qualification of households, monitoring the turnover of sale and rental units, preserving existing affordable housing, and compliance with Council monitoring requirements.
- (d) Legal or other fees related to litigation opposing affordable housing sites or objecting to the Council's regulations and/or action are not eligible uses of the affordable housing trust fund; however, a municipality may use affordable housing trust fund monies to defend its certified affordable housing plan.

**5:99-11.12 Spending plans**

- (a) A plan to spend affordable housing trust funds shall include the following:
1. A projection of revenues anticipated from imposing fees on development, based on pending, approved and anticipated developments and historic development activity;
  2. A projection of revenues anticipated from other sources, including payments in lieu of constructing affordable units on sites zoned for affordable housing, funds from the sale of units with extinguished controls, proceeds from the sale of affordable units, rental income, repayments from affordable housing program loans, and interest earned;
  3. A description of the administrative mechanism that the municipality will use to collect and distribute revenues;
  4. A description of the anticipated use of all affordable housing trust funds pursuant to N.J.A.C. 5:99-11.9;
  5. A schedule for the expenditure of all affordable housing trust funds;
  6. If applicable, a schedule for the creation or rehabilitation of housing units;
  7. If the municipality is supporting or sponsoring public sector or non-profit construction of

housing, a pro-forma statement of the anticipated costs, funding sources, and revenues associated with the development, consistent with standards required by the Agency in its review of funding applications;

8. If the municipality maintains an existing affordable housing trust fund, documentation showing that the entire trust fund balance as of the effective date of P.L. 2008 c. 46, July 17, 2008, will be spent and/or committed for expenditure within four years, as set forth at N.J.A.C. 5:99-11.17;

9. A plan to spend and/or commit for expenditure all affordable housing trust funds within four years of collection, as set forth at N.J.A.C. 5:99-11.17

10. A description of the anticipated use of excess affordable housing trust funds, in the event more funds than anticipated are collected, or projected funds exceed the amount necessary for satisfying the municipal affordable housing obligation.

(b) All spending plans are subject to the review and approval of the Council pursuant to N.J.A.C. 5:98-5.

#### **5:99-11.13 Consideration for techniques not in the adopted Fair Share Plan**

(a) A municipality may request authorization for expenditure of affordable housing trust funds on emergent affordable housing techniques not included in the municipal Fair Share Plan, in the form of an amendment to the spending plan.

(b) In addition to the requirements for approval of a spending plan or amendment to an approved spending plan set forth at N.J.A.C. 5:98-5, the resolution submitted by the municipality shall include a certification that the affordable housing opportunity is consistent with the Fair Housing Act and the Council's regulations, and the municipality shall submit information regarding the proposed mechanism in a format to be provided by the Council.

(c) The municipality shall submit an amendment to its Fair Share Plan to include the mechanism at the earlier of two years after the Council's approval of the spending plan amendment or the next planned amendment to the Fair Share Plan resulting from realistic opportunity review pursuant to N.J.A.C. 5:98-10.

(d) The municipality shall submit monitoring pursuant to N.J.A.C. 5:98-11 relating to the affordable units created using affordable housing trust funds.

#### **5:99-11.14 Monitoring**

All municipalities under the Council's or under a court of competent jurisdiction that maintain affordable housing trust funds shall submit monitoring to the Council. At a minimum, the monitoring shall include an accounting of any housing trust fund activity, including the source

and amount of funds collected, the amount and purpose for which any funds have been expended, and the status of the plan to spend the remaining balance pursuant to N.J.A.C 5:99-11.17. Pursuant to P.L. 2008, c. 46, the Council shall conduct monitoring of affordable housing trust funds maintained by municipalities subject to the terms of a judgment of compliance. These reports shall be submitted by the municipal housing liaison at such time and in such form as the Council requires.

#### 5:99-11.15 **Enforcement**

(a) The municipality's ability to impose and collect funds and maintain its affordable housing trust fund shall be conditioned on compliance with all requirements of this subchapter, which the Council shall monitor at least annually. Occurrence of any of the following may result in the Council taking an action pursuant to (b) below:

1. Failure to meet deadlines for information required by the Council in its review of a Housing Element and Fair Share Plan, development fee ordinance or plan for spending fees;
2. Failure to address the Council's conditions for approval of a plan to spend funds within the deadlines imposed by the Council;
3. Failure to address the Council's conditions for substantive certification within deadlines imposed by the Council;
4. Failure to submit accurate monitoring reports pursuant to N.J.A.C. 5:99-11.14 within the time limits imposed by the Council;
5. Failure to implement the spending plan and expend the funds within the time schedules specified in the spending plan;
6. Expenditure of funds on activities not approved by the Council;
7. Revocation of certification; or
8. Other good cause demonstrating that the funds are not being used for the approved purpose.

(b) The Council shall notify the municipality, including the chief financial officer, and the service list that one of the conditions listed above has occurred and shall direct the municipality cease imposition, collection, and expenditure of affordable housing trust funds.

1. Upon notifying the bank in accordance with the escrow agreement pursuant to N.J.A.C. 5:99-11.2(a), the Council shall direct that all or a portion of the funds remaining in the municipal affordable housing trust fund shall be transferred into the New Jersey

Affordable Housing Trust Fund established pursuant to section 20 of P.L. 1995, c. 222 (NJSA 52:27D-320) within in the time frame specified by the Council.

- (c) Any party that presents evidence to the Council's satisfaction that one or more of the conditions listed in (a) above exist in a particular municipality may request Council action pursuant to (b) above in the form of a motion pursuant to N.J.A.C. 5:98-13. The motion may also include a proposal to create or rehabilitate affordable housing and may include directing the municipality to expend funds on the proposal.
- (d) The Council may also revoke a development fee ordinance approval for any municipality that fails to comply with the requirements of this subchapter. Where such approval has been revoked, the Council shall not approve an ordinance permitting such municipality to impose or collect development fees for the remainder of the substantive certification period or judgment of compliance.
- (e) Loss of funds from the affordable housing trust fund account or loss of the municipality's ability to impose and collect development fees shall not alter the municipality's responsibilities pursuant to substantive certification or a court ordered judgment of compliance unless the funds are lost as a result of forfeiture pursuant to N.J.A.C. 5:99-11.17(Cite), in which case N.J.A.C. 5:99-11.15(b)2 shall apply.
- (f) No provision of this section applies to the transfer of uncommitted funds from municipal trust fund accounts pursuant to N.J.S.A. 52:27D-329.2 or -329.3.

**5:99-11.16 Ongoing collection of fees and maintenance of the affordable housing trust fund**

- (a) The ability for all municipalities to impose and collect fees and maintain an affordable housing trust fund shall expire with their substantive certification or judgment of compliance unless the municipality has petitioned the Council for substantive certification of a Housing Element and Fair Share Plan that addresses its succeeding affordable housing obligation, and has received the Council's approval of its development fee ordinance. Municipalities that fail to renew their ability to impose and collect development fees and maintain an affordable housing trust fund prior to the expiration of their substantive certification or judgment of compliance shall be subject to forfeiture of any or all funds remaining within its affordable housing trust fund. Any funds so forfeited shall be deposited into the New Jersey Affordable Housing Trust fund established pursuant to section 20 of P.L. 1995, c 222 (NJAC 52:27D-320). A municipality shall not impose a development fee on a development that receives preliminary or final approval after the expiration of substantive certification or a judgment of compliance, nor shall a municipality retroactively impose a development fee on such a development. A municipality shall not expend affordable housing trust funds after the expiration of substantive certification or a judgment of compliance.

**5:99-11.17      Transfer of municipal trust funds for failure to spend or commit to expend development fees and payments-in-lieu within four years of the date of collection**

- (a) Development fees and payments-in-lieu collected by a municipality on or after July 17, 2008 must be expended or committed for expenditure within four years of the date of collection.
- (b) No development fees or payments-in-lieu collected by a municipality on or after July 17, 2008 may be committed for expenditure or expended on a date more than four years from the date of collection.
- (c) Municipalities must submit to the Council proof of commitment of trust fund monies within 30 days of the end of the quarter in which the date four years from the date of collection occurs.
- (d) For the purposes of this section, funds shall be considered to be expended or committed for expenditure if one of the following standards has been met:
  - 1. The funds have actually been spent on a housing activity in accordance with N.J.A.C. 5:99-11.9;
  - 2. For housing activity in accordance with N.J.A.C. 5:99-11.9, the Council has been provided an executed contract or legally enforceable agreement implementing the housing activity and the following, as applicable: a municipal resolution or ordinance creating the program, a policy and procedures manual and completion of affordable housing trust fund and unit monitoring indicating units completed or rehabilitated;
  - 3. For housing activity in accordance with N.J.A.C. 5:99-11.9, the municipality has otherwise demonstrated a firm and binding obligation to spend such funds in a manner consistent with its respective affordable housing obligation; or
  - 4. For administrative expenses, the Council has been provided with the following: a municipal resolution or ordinance and an executed contract or agreement for expenses related to administering affordable housing.
- (e) The Council may extend the deadlines set forth in (a) and (b) above for payments-in-lieu if the municipality submits sufficient proof of building or other permits, or of other efforts concerning land acquisition or project development, as permitted by N.J.S.A. 52:27D-329.3(a).
- (f) A municipality that fails to expend or commit to expend the amounts collected pursuant to the timeframes established in (a) and (b) above shall be required to transfer any unexpended and/or uncommitted revenue collected to the New Jersey Affordable Housing Trust Fund established pursuant to section 20 of P.L. 1995, c. 222 (N.J.S.A. 52:27D-320). The Council shall follow the procedures set forth in (g) through (j) below before requiring any transfer of funds.
- (g) The Executive Director will notify the municipality and any affected parties on the service list of any unexpended and /or uncommitted funds indicated by the Council's records.

- (h) The municipality and any affected party so notified shall have 30 days from receipt of the notification to respond, including providing any documentation to substantiate that any funds have been expended or committed to be expended within four years of the date of collection.
- (i) After consideration of the responses submitted, the Executive Director shall issue a written recommendation setting forth the reasons for accepting or rejecting the information submitted.
- (j) After giving at least fifteen days' notice to the municipality and affected parties, the Council shall consider the Executive Director's recommendation. The Council, in its discretion, may permit a party objecting to the Executive Director's recommendation to address the Council, or the Council may consider the matter on the written record before it.

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